



28 December 2022

Sean Maloney
Senior Adviser, Listings Compliance
ASX Limited
10th Floor, 20 Bridge Street
SYDNEY NSW 2000

By email: listingscomplianceperth@asx.com.au

Dear Sean

ASX QUERIES

We refer to the further letter from ASX dated 22 December 2022.

BPH provides the following information in response to the further queries by ASX, using your numbering:

1. Question 1: Yes, BPH provided information to the Australian Financial Review (AFR) for the article. This information is also generally available and has been since 2010 (refer comments below).
2. Question 2: The information was provided to the AFR on or about 5 December 2022. Mr David Breeze was also interviewed by the AFR on or about 5 December 2022. It is understood that further general content was provided on or about that time by the media consultant to BPH, including the information released by the Government in the ADGSM. It should be noted that the AFR wrote the article and it was not fact checked by BPH before its release.
3. Question 3: BPH provided information to the AFR. Please refer to the response provided to the ASX on 20 December 2022.
4. Question 4: Please refer to the response made by BPH to ASX on 20 December 2022.

BPH does not agree that the articles in the AFR or HotCopper constitute a "public report". In ASX Listing Rule 5.25, the footnote to that rule notes that it applies to all public reports, *"including prospectuses, product disclosure statements, information memoranda, bidder's statements, target's statements, annual reports, financial statements, technical papers, presentations, website content and information given to ASX for release to the market under other chapters of these rules"*.

The footnote does not include a reference to a newspaper article nor a paid advertisement.

Further, the reference to this resource is information which is generally available having been the subject of numerous previous announcements by both BPH and other entities since 2010 and which have been given to ASX and released and the figure of \$8/GJ is framed as an expectation by the Company.

In terms of a short chronology (and not an exhaustive chronology), in the first instance, an Independent Experts report prepared for BPH's investee entity, Advent Energy Limited (Advent) was initially released on 22 December 2010 by BPH, as a cross release to a release by MEC Resources Limited (MEC).

On 14 August 2012, BPH released a report which confirmed the renewal of the PEP11 permit. At the time of renewal of the PEP11 permit 50% of the permit size was relinquished in accordance with the requirements of the permit licence conditions.

On 5 October 2012, BPH released its annual report on the ASX platform and again reported the estimated resource at that time.

There are other numerous disclosures made by BPH (and MEC and Advent) in the past 12 years relating to the PEP 11 resource which have been provided to and released by ASX.

It is noted that the ASX Listing Rules, and in particular the requirements in chapter 5, were updated on 1 December 2019, however this does not alter the previous disclosures made by BPH provided to and released by ASX.

5. Question 5: BPH repeats its position that the articles in the AFR and HotCopper do not constitute a "public report".

In respect of the "Cost Estimate", the article is not framed in the manner in which ASX seeks to portray it in its various queries as part of a production estimate by BPH. The comment from BPH is solely to the extent that the Company has "an expectation it can sell the gas" at a certain figure. This comment is simply based on costs disclosed in a report as part of an independent enquiry, it is not in the nature of a formal production estimate.

It follows that BPH does not consider it should be required to retract statements made in the article.

The Company confirms it is in compliance with the ASX Listing Rules, subject to the comments in this response.

This letter is authorised by the Board.

David Breeze
Managing Director

22 December 2022

Mr David Breeze
Company Secretary
BPH Energy Limited

By email: david@grandbridge.com.au

Dear Mr Breeze

BPH Energy Limited ('BPH'): ASX Aware Letter

ASX Limited ('ASX') refers to the following.

- A. An article which ASX understands appeared in the Australian Financial Review on 8 December 2022 entitled, "Gas project nixed by ScoMo 'could pump by 2025'", ('Article'). ASX understands the Article disclosed the following, among other things:

"The company fighting for the right to explore for gas off the NSW coast after its project was killed by Scott Morrison in his secret role as resources minister says it could have been supplying gas to the national market at \$8 a gigajoule by 2024 if it still had its permit....."

A favourable court decision followed by expedited joint approval by the NSW and Commonwealth governments could result in the resource producing gas exclusively for the local market by 2025, according to Asset Energy chief executive David Breeze.

"With major approval processes and the co-operation of government, this sort of project could be brought into fruition in a two-year time frame with all those processes being expedited," Mr Breeze told The Australian Financial Review. "The permit is far from dead in the water."

The company is yet to reveal how much gas the reserve could produce daily, but is adamant it could contain up to 5.5 trillion cubic feet of gas. At this size, the reserve is marginally smaller than the Bass Strait reserve, which is estimated to have up to 6 trillion cubic feet of gas. The company also believes there is carbon storage potential.....

Providing exploratory works confirm the 5.5 trillion cubic feet of gas believed to exist, Asset Energy would connect the field via a 26-kilometre underwater pipeline to the Colongra Gas Station near Tuggerah Lakes on the Central Coast.....

The field has the potential to supply 20 years' worth of gas for NSW, according to the company, which has committed to producing gas exclusively for the domestic market.

Asset says gas could be delivered to the market within two years of completing the well.

It also stands by a commitment to supply any gas produced to the Australian domestic market with an expectation it can sell the gas at a price of around \$8 a gigajoule, compared with a record average eastern Australian gas price of \$28.40 in the June quarter this year."

(the 'AFR PEP-11 Information').

- B. A paid advertisement ASX understands was made available on hotcopper.com.au and distributed via email by Hotcopper.com.au on or around 12 December 2022 entitled, "BPH Energy (ASX:BPH) plans to solve Australia's east coast gas crisis", ('Advertisement').
- C. BPH's response to ASX's aware query dated 19 December 2022, released on the ASX Market Announcements Platform ('MAP') on 21 December 2022 ('Response') which disclosed the following, among other things:

2. Please explain whether BPH was involved in providing information to hotcopper.com.au that resulted in the publication of the Advertisement?

The Australian Financial Review article on PEP11 dated 8 December 2022 and titled 'Fight goes on for gas project Morrison killed' was provided to Hotcopper by BPH.

3. If BPH was involved in providing information to hotcopper.com.au, when was the information provided to hotcopper.com.au? Please provide the date and time BPH provided the information.

The Australian Financial Review article was provided to Hotcopper on 8 December 2022 at 3:09pm by email.

4. Who prepared and/or provided any content given to hotcopper.com.au which was contained in the Advertisement, including the PEP-11 Information?

As set out above, the Australian Financial Review article on PEP11 was provided by BPH to Hotcopper. On 22 August 2022, Advent made a submission to the Australian Federal Government in relation to securing Australia's domestic gas supply, in response to the Federal Government consultation on strengthening the Australian Domestic Gas Security Mechanism and the release of a discussion paper Securing Australia's domestic gas supply Options to improve the Australian Domestic Gas Security Mechanism on the reform options and in response to the ACCC Gas Inquiry Report for 2017 – 2025 (ACCC Inquiry). The PEP-11 Information is contained in this submission by Advent and is publicly available information which can be accessed on the Federal Government's website: <https://consult.industry.gov.au/securing-australiasdomestic-gas-supply/submission/list>.

Further, the Resource Statement has been previously disclosed in various announcements released by BPH.

The Cost Estimate is based on the ACCC Inquiry. In 2018, the ACCC engaged Core Energy (Core) to develop detailed estimates of the gas production costs facing producers in the east coast gas market. For individual supply regions across the east coast, Core estimated both full lifecycle costs of production and forward costs of production for 2P reserves as at 31 December 2017. The analysis provided by Core compares price offers for 2022 and 2021 supply with estimates of forward production costs, since over the short-term producers are likely to continue producing gas as long as they expect to recover their operating costs.

Core's report on gas production costs estimated the costs of production for a range of areas. For example, the Middle Surat and Roma Shelf supply region in Queensland has material uncontracted 2P reserves (9,260 PJ) that Core expected to commence production by 2020 and estimated to have the highest forward cost of \$5.55/GJ. Further, the AEMO released its Production Costs by Basin in 2022 which estimate the production costs to be \$5.85 2P Reserves and \$8.45 for 2C Resource for the Bass Basin, which is comparable to the location of PEP11.

6. Noting the statement that, "PEP-11 is reported to contain prospective resources up to 5.5 trillion cubic feet of gas, potentially similar in size to the Bass Strait, and enough to supply the East Coast with approx. 20 years of gas" ('Resource Statement'), constitutes the public reporting of a prospective resources for the purposes of Listing Rules 5.25, 5.28, 5.35 and 5.36. In the absence of BPH releasing an announcement in compliance with Listing Rules 5.25, 5.28, 5.35 and 5.36 please confirm that BPH has released an announcement which:

(a) retracts any reference to the Resource Statement as being contrary to the Listing Rules;

(b) states that BPH does not have any reasonable basis for disclosing that Resource Statement; and

(c) includes a statement to the effect that investors should not rely on the Resource Statement for their investment decision.

BPH has not released an announcement retracting the Resource Statement, and it believes it does have a reasonable basis for disclosing the Resource Statement.

7. Noting the statement that, "BPH believe the project could have been supplying gas to the national market by 2024 at a cost of ~\$8/Gj" ('Cost Estimate'), constitutes forecast financial information derived from an estimate of prospective resources for the purposes of Listing Rule 5.28.6, please confirm that BPH has released an announcement which:

(a) retracts any reference to the Cost Estimate as being contrary to the Listing Rules;

(b) states that BPH does not have any reasonable basis for stating that Cost Estimate; and

(c) includes a statement to the effect that investors should not rely on the Cost Estimate for their investment decision.

BPH has not released an announcement retracting the Cost Estimate and believes it has a reasonable basis for the estimates provided.

- D. Section 1041F of the *Corporations Act 2001* (Cth) ('Act') which, among other things, prohibits a person from inducing another person to deal in financial products "by making or publishing a statement, promise or forecast if the person knows, or is reckless as to whether, the statement is misleading, false or deceptive".
- E. Section 1041H of the Act which, among other things, prohibits a person from engaging in "conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive."
- F. Listing Rule 3.1, which requires a listed entity to give ASX immediately any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- G. The definition of "aware" in Chapter 19 of the Listing Rules, which states that:
- "an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity"*
- and section 4.4 in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* "When does an entity become aware of information".
- H. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure:
- "3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*
- 3.1A.1 *One or more of the following applies:*
- *It would be a breach of a law to disclose the information;*
 - *The information concerns an incomplete proposal or negotiation;*
 - *The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
 - *The information is generated for the internal management purposes of the entity; or*
 - *The information is a trade secret; and*
- 3.1A.2 *The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*
- 3.1A.3 *A reasonable person would not expect the information to be disclosed."*

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- I. Listing Rule 5.25 which sets out certain disclosure requirements for entities reporting petroleum resources.
- J. Listing Rule 5.28 which contains the requirements for publishing estimates of prospective resources and in particular, Listing Rule 5.28.6 which states:
- “An entity must not report forecast financial information derived from an estimate of prospective resources.”*
- K. Listing Rule 15.7 which states:
- “An entity must not release information that is for release to the market to any person until it has given the information to ASX and has received an acknowledgement that ASX has released information to the market.”*
- L. ASX’s policy position on the concept of “confidentiality”, which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. In particular, the Guidance Note states that:
- “Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule.”*

Having regard to the above, ASX asks BPH to respond separately to each of the following questions and requests for information.

1. Please explain whether BPH was involved in providing information to the Australian Financial Review that resulted in the publication of the Article?
2. If BPH was involved in providing information to Australian Financial Review, when was the information provided to Australian Financial Review? Please provide the date and time BPH provided the information.
3. Who prepared and/or provided any content given to Australian Financial Review which was contained in the Article, including the AFR PEP-11 Information?
4. Noting the statement in the Response that, *“BPH has not released an announcement retracting the Resource Statement, and it believes it does have a reasonable basis for disclosing the Resource Statement.”*, please provide a detailed explanation for the reasonable basis for disclosing the Resource Statement, commenting specifically on how BPH has a reasonable basis for disclosing the Resource Statement given BPH has not released an announcement in compliance with Listing Rules 5.25, 5.28, 5.35 and 5.36 in relation to the Resource Statement.
5. Noting the statement in the Response that, *“BPH has not released an announcement retracting the Cost Estimate and believes it has a reasonable basis for the estimates provided.”*, please provide a detailed explanation for the reasonable basis for disclosing the Cost Estimate, commenting specifically on how BPH has a reasonable basis for disclosing the Cost Estimate given the following matters:
 - a. The Resource Statement confirms that the publically reported resource for PEP-11 is prospective.
 - b. Listing Rule 5.28.6 states *“An entity must not report forecast financial information derived from an estimate of prospective resources.”*
 - c. The Cost Estimate is not derived from a technical study that complies with the Listing Rules and the Society of Petroleum Engineers Petroleum Resources Management System (‘SPE-PRMS’).
 - d. The Response indicates that the Cost Estimate is based on the following reports which are general in nature and relate to other Oil and Gas projects with (2C) contingent reserves or (2P) proven reserves:
 - i. a discussion paper released by the Australian Competition & Consumer Commission (‘ACCC’) entitled *“Gas inquiry 2017-2025”*; and
 - ii. a report released by Australian Energy Market Operator (‘AEMO’) entitled *“Gas Reserves and Resources and Cost Estimates”*, regarding which the Response indicates the Bass Basin is *“comparable to the location of PEP11”*.

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6. If BPH cannot provide a reasonable basis which complies with Listing Rule 5.28.6 for the statements set out in questions 4 and 5 above, please release an announcement which:
- a. retracts any reference to the AFR PEP-11 Information, the Resource Statement and the Cost Estimate as being contrary to the Listing Rules;
 - b. states that BPH does not have any reasonable basis for disclosing the AFR PEP-11 Information, the Resource Statement and the Cost Estimate; and
 - c. includes a statement to the effect that investors should not rely on the AFR PEP-11 Information, the Resource Statement and the Cost Estimate for their investment decision.
7. Please confirm that BPH is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
8. Please confirm that BPH's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of BPH with delegated authority from the board to respond to ASX on disclosure matters.

When and where to send your response

This request is made under, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, **by no later than 4.00 PM AEDT on Wednesday, 28 December 2022.**

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at listingscomplianceperth@asx.com.au. It should **not** be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to BPH's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

It should be noted that BPH's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, providing the information requested in this letter.

Further, if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, BPH's obligation is to disclose the information "immediately".

Suspension

If you do not respond to this letter by the deadline set out above or if ASX does not consider your response to be satisfactory, ASX is likely to continue to suspend trading in BPH's securities under Listing Rule 17.3.

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

Sean Maloney
Senior Adviser, Listings Compliance (Perth)